GOVERNMENT'S SENTENCING MEMORANDUM

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May 19, 2008

BY HAND

The Honorable Lewis A. Kaplan United States District Judge United States District Court Southern District of New York 500 Pearl Street
New York, New York 10007

Re: <u>United States v. Michael Dede, a/k/a "Bart," a/k/a "Sunshine"</u>, 07 Cr. 1015 (LAK)

Dear Judge Kaplan:

The Government respectfully submits this letter in advance of the defendant's sentencing scheduled for May 23, 2008, at 11:00 a.m., and in response to the defendant's May 12, 2008 letter ("Def. Ltr."). For the reasons that follow, the Government agrees with the Probation Office that a sentence within the applicable Guidelines range of 235 to 293 months' imprisonment is appropriate and reasonable in this case.

Procedural History

Indictment 07 Cr. 1015 (LAK) charged the defendant Michael Dede, a/k/a "Bart," a/k/a "Sunshine," in one count, namely, that, from at least in or about 2004, up through and including August 2006, the defendant unlawfully, intentionally, and knowingly conspired to possess with intent to distribute, and did distribute, more than one kilogram of heroin, in violation of Title 21, United States Code, Sections 812, 841(a)(1), 841(b)(1)(A), and 846. (PSR \P ¶ 1, 2). On February 21, 2008, following a jury trial, the defendant was convicted of Count One of the Indictment. (PSR \P 3).

¹ References to "PSR" are to the pre-sentence investigation report, dated May 16, 2008.

Evidence at Trial

The evidence at trial established beyond a reasonable doubt that the defendant, along with several other individuals, including Jose Cruz and Lester Farrell, was part of a heroin organization located in the Bronx that distributed and sold dozens of kilograms of heroin over a 7 year period to various drug spots located throughout the Bronx. (Tr. 86, 87, 113 - 130). One of the defendant's co-conspirators, Jose Cruz, testified at the trial pursuant to a cooperation agreement. (Tr. 91 - 94). Cruz testified that between 1999 and 2004, the defendant supplied their organization with between 20 and 30 kilograms of heroin:

- Q. Talking now about the 1999 to 2004 time frame, approximately how much heroin did the defendant supply you with during that time?
- A. About 20, 30 kilograms. Kilos.
- Q. How were you getting that? How are you doing the math on that?
- A. About 400 grams a month, 400 to 600 grams a month by the year. 150 grams a week to 200 grams a week. So sometimes 300 to about 600 grams a month.
- Q. How much heroin would that be approximately over the course of a year?
- A. Around 7 kilograms.
- Q. By the way could it be a little more?
- A. Yes, it can.
- Q. Could it be a little less?
- A. [I] doubt it.

² References to "Tr." are to the transcript from the trial, dated February 13, 14, 19, 20, and 21, 2008.

(Tr. 86). Between 2004 and August 2006, Cruz testified that the defendant supplied him with another 20 kilograms of heroin:

- Q. Going from the 2004 time frame until the time you were arrested, which you said was in August of 2006, how much heroin was the defendant supplying you with during that time?
- A. Another 20 kilograms.

(Tr. 86). During the time-frame charged in the Indictment, the defendant supplied more heroin to Cruz then he had previously.

Cruz testified about where the defendant supplied the heroin to him. Cruz testified that he would pick up heroin from the defendant "at 198th Street and Morris, sometimes Bronxdale, sometimes Pelham Parkway, sometimes at [the defendant's] house, sometimes at [the defendant's] job." (Tr. 87). In addition to supplying Cruz with multiple kilograms of heroin, the defendant also assisted Cruz in packaging the heroin into bundles to prepare it to be sold on the streets. (Tr. 89). The defendant was well-paid for his efforts, both for supplying Cruz with heroin, and for assisting Cruz in bagging the heroin for sale on the streets:

- Q. What would the defendant do?
- A. Then he would tape the bags also and wrap them up in rubber bands for us.
- Q. Why would he tape up the bags?
- A. Because he was good at it and fast, because he had done it in the past.
- Q. What do you mean by that?
- A. He used to package up heroin for people, so he already knew how to do it. He was more experienced and everything, so I would pay him to help me at times.
- Q. Would you pay him for this?
- A. Yes, I would.
- Q. How much would you pay him?

A. \$2 off every gram. Meaning if he packaged up a hundred grams, he would make \$200.

. . . .

- Q. Tell me about a typical deal with the defendant. How would it get set up and how would it happen?
- A. I met up with him, asked him if I would get this X amount of heroin. He would tell me the price and tell me I wanted that amount, I had to give a certain amount of money. Suppose I asked for \$30 worth of heroin. Sometimes I would give -- if I asked for \$30,000 worth of heroin, I would give him 10,000 or 15,000 up front, and then pay the rest as I distributed the heroin.
- Q. How long would it typically take you to pay the rest?
- A. Sometimes three days, sometimes four days, sometimes a week.

(Tr. 121-123).

Cruz also testified extensively about his own criminal conduct and other co-conspirators who worked with him in the drug business. (Tr. 110 - 130). Another one of the defendant's co-conspirators was Lester Farrell. Farrell also testified at trial pursuant to a cooperation agreement. (Tr. 260 - 261). Farrell, like Cruz, testified about the defendant's extensive involvement in distributing heroin over the course of several years. (Tr. 255 - 259). Farrell testified about delivering thousands of dollars to the defendant in August 2006. (Tr. 268 - 270). He also testified about going to the defendant's house to pick up heroin. (Tr. 257 - 259).

Finally, the Government introduced physical evidence, including heroin sold by the defendant to Jose Cruz, and drug paraphernalia that was recovered from Cruz's stash house after Cruz and Farrell's arrest.

This evidence, combined with two law enforcement witnesses who testified about seeing the defendant with Jose Cruz, telephone records that linked the defendant to Cruz and Farrell, and the defendant's post-arrest statement, established beyond a reasonable doubt that the defendant was a member of a multi-kilogram heroin organization between 1999 and 2006.

The defendant presented a defense case. Cynthia Diaz, the defendant's wife, testified about the defendant's background, their relationship, and their financial situation. Ms. Diaz also testified that the defendant was not a drug dealer, and she denied ever being present when the defendant was collecting money or delivering heroin. (Tr. 348 - 366).

The jury convicted the defendant. (Tr. 516).

The Pre-Sentence Report

The pre-sentence investigation report (the "PSR"), dated May 16, 2008, correctly finds that the base offense level is 38, and that the defendant is in Criminal History Category I. (PSR ¶¶ 26, 64). According to the PSR, the defendant has several prior arrests, and three prior convictions, the most recent being in 1993. (PSR ¶¶ 28 - 37). Because of the nature and age of the defendant's prior convictions, the defendant only has one criminal history point, placing him in Criminal History Category I. The sentencing guidelines range is 235 - 293 months' imprisonment. (PSR ¶ 64). Probation recommends a bottom of the Guidelines sentence of 235 months' imprisonment. In recommending a sentence of 235 months, probation explains:

We are deeply disturbed by the ironic nature of Mr. Dede's life. Here you have . . . a warm, loving, pro-social, honest working and charismatic individual who has had a positive impact on many, many people's lives in his community - while at the same time, behind the scene, you have a serious drug dealer who was irreparably poisoning the very same community that he professed to love and which loved him.

(PSR p. 21).

Discussion

The Government respectfully recommends that a Guidelines sentence (within the 235 - 293 months' range) is

appropriate and reasonable in this case. The defendant has failed to accept any responsibility for his actions, nor has he demonstrated circumstances that uniquely distinguish him from a typical defendant convicted of distributing between 40 and 50 kilograms of heroin over a 7 year period that would justify leniency from the Court in the form of a below-Guidelines sentence.

A. The Guidelines Provide A Benchmark In Determining The Appropriate Sentence

The Guidelines still provide strong guidance to the Court in light of *United States* v. *Booker*, 543 U.S. 220 (2005) and *United States* v. *Crosby*, 397 F.3d 103 (2d Cir. 2005). Although *Booker* held that the Guidelines are no longer mandatory, it held also that the Guidelines remain in place and that district courts must "consult" the Guidelines and "take them into account" when sentencing. 543 U.S. at 264. As the Supreme Court recently stated, "a district court should begin all sentencing proceedings by correctly calculating the applicable Guidelines range" — that "should be the starting point and the initial benchmark." *Gall* v. *United States*, 128 S. Ct. 586, 596 (2007).

After that calculation, however, a sentencing judge must consider seven factors outlined in Title 18, United States Code, Section 3553(a): "the nature and circumstances of the offense and the history and characteristics of the defendant" (§ 3553(a)(1)); the four legitimate purposes of sentencing (§ 3553(a)(2)); "the kinds of sentences available" (§ 3553(a)(3)); the Guidelines range itself (§ 3553(a)(4)); any relevant policy statement by the Sentencing Commission (§ 3553(a)(5)); "the need to avoid unwarranted sentence disparities among defendants" (§ 3553(a)(6)); and "the need to provide restitution to any victims" (§ 3553(a)(7)). Gall v. United States, 128 S. Ct. at 596-97.

In determining the appropriate sentence, the statute directs judges to "impose a sentence sufficient, but not greater than necessary, to comply with the purposes" of sentencing, which are:

- (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
- (B) to afford adequate deterrence to criminal conduct;

- (C) to protect the public from further crimes of the defendant; and
- (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

18 U.S.C. § 3553(a)(2).

Courts may not presume that the appropriate sentence necessarily lies within the Guidelines range, but "the fact that § 3553(a) explicitly directs sentencing courts to consider the Guidelines supports the premise that district courts must begin their analysis with the Guidelines and remain cognizant of them throughout the sentencing process." Gall, 128 S. Ct. at 596-97 & Their relevance throughout the sentencing process stems in part from the fact that, while the Guidelines are advisory, "the sentencing statutes envision both the sentencing judge and the Commission as carrying out the same basic § 3553(a) objectives," Rita v. United States, 127 S. Ct. 2456, 2463 (2007), and the Guidelines are "the product of careful study based on extensive empirical evidence derived from the review of thousands of individual sentencing decisions," Gall, 2007 WL 4292116, at *6; see also Rita v. United States, 127 S. Ct. at 2464. To the extent a sentencing court varies from the Guidelines sentence, "[it] must consider the extent of the deviation and ensure that the justification is sufficiently compelling to support the degree of the variance." Gall, 128 S. Ct. at 597.

One of the important reasons why the Guidelines should be given substantial weight is that they represent the reasoned judgment of the United States Sentencing Commission. See United States v. Rattoballi, 452 F.3d 127, 133 (2d Cir. 2006). Sentencing Commission is a body of experts whose statutory mission is to apply "research, experience, and analysis" to promulgate guidelines that will "further the basic purposes of criminal punishment: deterrence, incapacitation, just punishment, and rehabilitation." U.S.S.G. Ch. 1, Pt. A, § 2. Because these basic purposes of criminal punishment - which essentially mirror the purposes that this Court must consider pursuant to Section 3553(a)(2) - are inherently abstract, it is difficult to overstate the value of the perspective of a national commission whose charter is to collect and analyze data on sentences imposed throughout the nation. Absent the national perspective they provide, it is hard to imagine how the sentencing factor identified in Section 3553(a)(6) - namely, "the need to avoid

unwarranted disparities among defendants with similar records who have been found guilty of similar conduct" — could be meaningfully considered at all.

B. The Court Should Strongly Consider a Guidelines Sentence in This Case

Here, the Probation Department has recommended a specific sentence of 235 months' imprisonment. The defendant argues for a sentence of 120 months' imprisonment, a sentence that is 115 months below the Guidelines Range. (Def. Ltr. at 1). The Court should impose a Guidelines sentence.

The defendant identifies several factors that he contends counsels for a non-guidelines sentence of 120 months' imprisonment. In particular, the defendant argues that (1) his adult life has been marked by service to others, (2) he has worked hard during his life, and (3) a non-Guidelines sentence will allow him to more quickly resume his job and rejoin his family. (Def. Ltr. at 1 - 2). The defendant's submission also attaches many letters from friends and family that speak to the defendant's dedication to family, friends, and his community. The Government submits, however, that none of these factors warrant a non-guidelines sentence.

Noticeably absent from the defendant's lengthy submission is any explanation for the double life the defendant was leading from at least 1999 through at least August 2006. The defendant was distributing approximately 7 kilograms of heroin a year, year after year, from 1999 through 2004. Thereafter, he increased the amount of heroin he was distributing to approximately 10 kilograms a year. The defendant was a key member of a large heroin organization, serving as the organization's main supplier, in addition to assisting in converting the heroin from a hard, rock-like substance into small bundles, to be re-sold on the streets to addicts for \$5, \$10, or \$20. This unmistakable and undeniable fact stands in stark contrast to the defendant's submission and attached exhibits, which speak to a typical life of hard work, surrounded by family and friends.

It appears from the PSR and the defendant's submission that the defendant is surrounded by law-abiding family and friends who are successful, and who mistakenly believed that the defendant shared their values. Sadly, it appears that, in addition to evading and hiding his crimes from law enforcement for over seven years, the defendant also managed to hide his drug

dealing from his family and friends. This is not surprising. the evidence at trial showed, the defendant had a unique role in the conspiracy. The defendant was not on the streets making hand-to-hand deals, nor was he riding around, like Jose Cruz, in an expensive car to various drug spots distributing bundles of heroin. Rather, the defendant was able to work behind the scenes, meeting Jose Cruz and Lester Farrell in his apartment, at his job, and at locations where he was protected from the watchful eye of law enforcement. To be sure, his role in the conspiracy was different than Jose Cruz and Lester Farrell. However, it was just as significant, or even more so, considering he served as the main heroin supplier for the organization. addition, the evidence at trial established that the defendant did not keep his family and job completely separate from his drug dealing. Indeed, Cruz and Farrell testified that they would go to the defendant's house to pick up the heroin, and Cruz testified about meeting the defendant while he was working to pick up heroin. Thus, the defendant's submission and attached exhibits only tell part of the story. Left out of the picture is the fact that even though the defendant had a loving wife, loving children that he supported, and friends, he still chose to deal in poison.

Moreover, the defendant's conduct does not reflect an aberration of an otherwise lawful life. According to the PSR, the defendant was on probation until May 1997, for a youthful offender conviction for larceny when he was caught stripping a stolen automobile. Less than two years after his probation ended, he started dealing heroin with Jose Cruz. He continued to deal heroin, week after week, month after month, year after year, until Jose Cruz got arrested. The defendant did not have a change of heart. The defendant did not choose to stop dealing heroin. Rather, he stopped dealing heroin when his coconspirators got arrested. A background such as this does not counsel for any deviation from the Guidelines Range, much less the significant deviation he requests.

Further, as the PSR notes, a sentence of 120 months' imprisonment, as the defendant requests, would reflect an offense involving between 700 grams and 1 kilogram of heroin. As the evidence at trial showed, however, the defendant was often supplying his co-conspirators with 700 - 1000 grams of heroin on a weekly basis during the course of the conspiracy. (Tr. 86 - 87 (Cruz: "Sometimes [Dede] would give me 1000 grams a week, sometimes he would give me 800 grams a week.")). Such a significant deviation from the Guidelines is not warranted, notwithstanding the family and

friends that surround the defendant. A Guidelines sentence properly takes into account the circumstances of the offense, the defendant's background, and, the Government submits, is appropriate in this case.

Finally, the letters from the defendant's family and friends, as well as the defendant's submission, suggest that a Guidelines sentence would be an unfair punishment to the defendant's family. This suggestion is misplaced. The defendant faces the same sentence that every convicted 40-kilogram heroin dealer faces. This punishment is not unfair - it is appropriate. The fact that the defendant has family and friends that will miss him while he is incarcerated is consistent with most convicted defendants - a consequence of the defendant's actions. Obviously, the defendant has no obligation to accept responsibility for his actions. The defendant does not have to apologize for what he did. It is his right to contest his conviction. But the defendant wants the benefits that often attach to a defendant who does accept responsibility for his actions in the form of leniency from the Court. This is undeserved, and the Court should reject his efforts and impose a sentence within the Guidelines.

For these reasons, the Government contends that a Guidelines sentence is appropriate and reasonable in this case.

Conclusion

For the foregoing reasons, the Government respectfully submits that the defendant should be sentenced within the Guidelines range of 235 to 288 months' imprisonment.

Respectfully submitted,

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